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COMPLIANCE AND CONFIDENTIALITY

A. PROVIDER COMPLIANCE PROGRAMS

Each provider entity is required to have an internal compliance program to insure that all applicable state and federal laws are followed. At all times during the terms of their contracts, Contractors shall maintain and operate a compliance program that meets the minimum requirements for program integrity as set forth in 42 CFR 438.608. Failure to establish and maintain a compliance program as required by this section shall be considered a material breach of contract. In addition, organizational providers share some elements of the MHP's compliance program.

Elements of a compliance program

1. Code of Conduct and Compliance Standards, as described below.
2. Compliance Officer, who is a senior manager charged with responsibility for overseeing and monitoring implementation of the compliance program
3. Communications, which create avenues for employees to raise complaints and concerns about compliance issues, including billing fraud, without fear of retribution.
4. Training and Education for employees regarding compliance requirements.
5. Auditing and Monitoring Systems, designed to reasonably detect and prevent potential violations of laws and regulations relating to health care and human services funding and programs.
6. Enforcement and Disciplinary Actions, within labor guidelines, to enforce the program including discipline of individuals for engaging in wrongful conduct or for failing to detect or report noncompliance.
7. Response and Prevention, which consists of mechanisms to respond to and investigate all reasonable concerns regarding compliance and suspected noncompliance and of taking necessary corrective action to prevent recurrence.

Code of Conduct

A Code of Conduct is a statement signed by all employees, contractors, and agents of an organization that promotes a commitment to compliance and is reasonably capable of reducing the prospect of wrongful conduct. Codes of Conduct should be created at the agency level.

MHP's Compliance Hotline

The MHP has created a Hotline for its own staff as well as Contractors to report concerns about a variety of ethical, legal, and billing issues. The confidential Hotline is toll-free and available 24 hours per day, 7 days per week. Callers may remain anonymous if they wish. The number of the Compliance Hotline is 866-549-0004.

CONFIDENTIALITY STANDARDS AND REQUIREMENTS

The maintenance of client confidentiality is of primary importance, not only to meet legal mandates, but also because of the fundamental trust inherent in the services provided through the MHP.

MHP Responsibilities

In order to ensure compliance with confidentiality policies and protocols, the MHP enforces the following procedures:

- Every member of the workforce* is informed about confidentiality policies, as well as applicable state and federal laws regarding client anonymity and the confidentiality of clinical information.
- As a condition of employment, each member of the workforce signs a confidentiality agreement, promising to comply with all confidentiality protocols.
- Any client treatment records gathered during the course of provision of services, provider site and record reviews, or as necessary, are protected through strictly limited access. Internal clinical staff has access to case data and files only as necessary to perform their jobs.

**Workforce is defined as employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the provider, is under direct control of the provider, whether or not the individuals is paid by the provider.*

Provider Responsibilities

Each provider will act in accordance with good judgment, clinical and ethical standards and State and Federal law to ensure that all written and verbal communication regarding each client's treatment and clinical history is kept strictly confidential.

Every provider must have policies, procedures and systems in place to protect the confidentiality (or security) of health information and individual rights to privacy. Requirements include safeguards to prevent intentional or accidental misuse of protected health information and sanctions for employee violations of those requirements.

Each provider must train all members of its workforce on the policies and procedures with respect to protected health information. The provider must document that the training on confidentiality has been provided. At a minimum, documentation of training shall consist of a signed acknowledgement by the member of the workforce specifying which training has been received and the date the training was taken. The provider must retain the documentation of the training for six years. These training records will assist the provider in identifying where

supplementary training needs to be conducted, if there are changes in the privacy or security regulations.

Every provider must have in place a Confidentiality Agreement for all workforce members. The Confidentiality Agreement should sufficiently identify the type of information to be protected, the worker's /vendor's responsibility to protect it, and methods that must be used to protect it in order to assure confidentiality and to comply with Health Insurance Portability and Accountability Act (HIPAA) regulations. The Agreement must include a signed statement from the workforce member/vendor saying that he or she has received the information related to the maintenance, disclosure, or destruction of confidential information. This statement must be signed within a reasonable period of time after the person joins the provider's workforce. Additionally providers must be able to also access documentation showing that all vendors and business partner personnel with access to protected information have also signed such agreements with their employers.

Contractor and its agents and employees are subject to and shall comply with the Child Abuse Reporting Law (California Penal Code section 11164) and Adult Abuse Reporting Law (California Welfare and Institutions Code section 15630).

Since April, 2003 providers must provide a written notice of information practices –"Notice of Privacy Practice"—to all clients. This notice must include:

- Mandated reporting requirements when a client presents as an imminent danger to self or others;
- Mandated reporting requirements concerning the abuse or neglect of children or older adults;
- The review of records by third party payers for authorization or payment purposes.

Providers should disclose to clients the fact that records may be reviewed in the course of supervision, case conferences, and quality management.

Additionally, providers are to distribute the County Mental Health Plan (MHP) Notice of Privacy Practice to all new clients. A notation is made on the Assessment form (MHS-650 and/or MHS-663) when the MHP-Health Plan NPP has been offered.

Providers are encouraged to have young clients (age 12 and over), and a child's legal guardian, read and sign a consent for treatment. There are special considerations with children and adolescents who are Dependents of the Juvenile Court. With these youth, Children's Services obtains consent for medical and mental health care treatment (not including psychotropic medications or hospitalizations) by having parents or the Court sign the appropriate version of HHSA 04-24. For consents for treatment and releases of information and whenever in doubt, please contact the client's child welfare worker for assistance with obtaining the needed information. If the youth is a Dependent of the Court, without parental or legal guardianship rights involvement, then the youth will need an ex parte from the court for consent to treat. Providers may share information freely with an attorney (or his or her investigator) representing

a Dependent child, if needed to assist in the legal representation. In regards to clients receiving AB2726 services, the Education Code (Section 56504) states that a parent may request to examine and receive copies of all school records within 5 days of a written or oral request. Since AB2726 is defined as school related mental health services, this request also pertains to a parent's request for copies of the medical record.

For further information regarding legal and ethical reporting mandates, please contact your agency's attorney, the State licensing board or your professional association.

Specific Procedures for Providers

Each provider and its agents, employees and representatives shall comply with all applicable provisions of the California Welfare and Institutions Code. Provider shall follow all pertinent County, State and Federal regulations for safeguarding client medical records and confidentiality. Provider shall have in place, before services commence, County approved policies and procedures for:

- Release of Information
- Storage and maintenance of open and closed cases;
- Limiting access to medical records and any other client information among levels of staff;
- Assuring that the Children's Mental Health Documentation and Uniform Clinical Records Manual standards for the type of service provided are adhered to;
- Assuring that information in the medical record is organized, clear, legible, complete and current.

Coding and Billing Requirements

The Federal Health Insurance Portability and Accountability Act (HIPAA) includes requirements regarding transactions and code sets to be used in recording services and claiming revenue. The rule, contained in CRF Chapter 42, took effect in October 2003 and includes a requirement for both standard Procedure Codes and Diagnosis Codes. Uniform Medical Record forms (see Section F, Quality Improvement) of this Manual have been revised to reflect the new codes, and QI staff regularly provides training on the use of the forms. Additional requirements for medical records come from the County's contract with the California Department of Mental Health; these requirements determine the nature of chart reviews during a Medi-Cal audit and the items for which financial recoupment of payment for services will be made by State or County reviewers. Following are current requirements and resources related to coding and billing:

- Services must be coded in compliance with Current Procedural Terminology (CPT) standards, or with Healthcare Common Procedural Coding System (HCPCS) if there is no CPT code.

- Diagnoses must be coded using the International Classification of Diseases (ICD-9 CM, or ICD-10 when adopted). In general, a diagnosis is made using the fuller descriptions of the Diagnostic and Statistical Manual, 4th Edition, Text Revision (DSM-IV TR) and "crosswalked" to the ICD by the Management Information System software (currently InSyst) or the clinician. The crosswalk should result in the highest level of specificity in recording the diagnosis.

- Services are recorded on the Billing Record, which includes the CPT code, the ICD-9 codes, and the staff number. The Billing Record is used to enter services to the MIS and will reflect the range of services actually in the provider's budget. Each service also carries a 3 digit InSyst procedure code which is related to the CPT or HCPCS code.

- The Code Map for Outpatient services is appended to this manual. InSyst and CPT codes for Day Mode and Inpatient services are unchanged by the HIPAA requirement. The Code Maps include CPT codes, HCPCS codes, service descriptions, the 3 digit InSyst codes for AB 2726 and non-AB 2726 versions of each service, InSyst Code Names (long and short), Service Function Codes, Location Codes, Default Medi-Cal Modifiers, InSyst Mask for Service Entry, and the InSyst Staff Mask. Services with a restricted Staff Mask (e.g., physicians only) may not be entered for staff whose profile and scope of practice do not match the mask.

- The Crosswalk between DSM-IV TR and ICD-9 is appended to this manual (Section O, Attachment 1).

- A grid describing documentation standards for each procedure code (the "Rainbow Grid") is appended to this manual (Section O, Attachment 2). Documentation of services must comply with HIPAA, State, and County requirements.